

**REMARKS**

Claims 1, 2, 4, 5, 7-10, 12-25 and 27-32 remain in connection with the present application with claims 1, 4, 7, 8, 9, 12, 16, 17, 18, 20, 22, 27, 29, 31 and 32 being independent. Reconsideration in view of following remarks is kindly requested.

**Allowable Subject Mater**

Initially, Applicants wish to thank the Examiner for acknowledging the allowance of claims 7-10 and 22-25.

**Double Patenting Rejections**

Claims 1, 4, 12, 18, 20 and 27 were rejected based on the doctrine of obviousness-type double patenting based on claims 1 and 2 of U.S. Patent No. 6,065,061. Without admitting or denying the substantive nature of this rejection, Applicants submit that the filing of the enclosed terminal disclaimer overcomes these rejections. The filing of the disclaimer is made only to advance prosecution.

**35 USC §103 Rejections**

- a. **The references, taken separately or in combination, do not render the claims obvious.**

Claims 1-2, 4-5, 12-21 and 27-32 were rejected under 35 USC §103(a) as allegedly being unpatentable over Jones et al. (US Patent No. 5,903,558, hereinafter "Jones") in view of Atarashi et al. (US Patent No. 6,173,312, hereinafter "Atarashi"). These rejections are respectfully traversed.

Applicants respectfully submit that the claims are not rendered obvious by a combination of Jones and Atarashi for at least the following reasons.

Jones is directed at increasing the quality-of-service (QoS) of upstream and downstream data paths. It is wholly unrelated to communicating or routing data to an endpoint using an alternative or secondary IP address when a service interruption occurs, as in the claims of the present invention.

Contrary to statements in the Office Action, there is no disclosure in Jones, nor does Jones imply, that it makes use of primary and alternative IP addresses. The Internet routers shown in FIGs. 2 and 3 of Jones are shown connected to a cable router 304 and CCF/PSTN router 306 (see FIG. 3). These connections would not lead one of ordinary skill in the art to conclude that the Internet router was making use of primary and alternative IP addresses. Though Internet routers that exist today and were placed into service after the filing date of the present application may use primary and alternative IP addresses, such routers are not prior art and are therefore irrelevant to the patentability of the claims of the present invention.

It appears that the Examiner may be relying on the specification of the present application which discloses the use of primary and alternative IP addresses. Such reliance is impermissible hindsight.

In the Final Office Action the Examiner states that the Internet routers “use the components depicted in FIG. 4.” Nothing in FIG. 4, though, discloses or suggests the use of primary and alternative IP addresses by the routers in FIGs. 2 and 3.

In sum, Jones does not disclose or suggest the use of primary and alternative/secondary Internet protocol addresses nor the use of an alternative/secondary IP address during a service interruption to communicate or route data to an endpoint, as in the claims of the present invention, nor does Atarashi overcome this deficiency.

Though it is also admitted in the Final Office Action that Jones does not teach or disclose the use of primary and alternative IP addresses to communicate with an endpoint during service interruptions, nonetheless, it is alleged by the Examiner that it would have been obvious to one of ordinary skill in the networking art that the claimed inventions differ from the teachings of Jones “only by a degree.”

Applicants respectfully submit that the Examiner is using impermissible hindsight by alleging that the difference between Jones and the claimed inventions are only a problem of degree.

As disclosed in Jones, a router provides an alternative data path when upstream or downstream data transmissions require a higher quality of service.... The quality of service may be defined through various performance parameters, such as, delay, bit error rate and throughput (col. 4, lines 52-61). However, a careful reading of Jones results in the conclusion that Jones’ performance parameters are not used to route data to an endpoint during a service interruption. The Examiner appears to be again relying his own alleged knowledge. Applicants note that reliance on common knowledge or common sense of a person of ordinary skill in the art without any specific hint or

suggestion of this in a particular reference is not the proper standard for reaching the conclusion of obviousness. See *In re Sang Lee*, 61 USPQ2d 1430 (Fed. Cir. 2002).

To establish a *prima facie* case of obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. Because the Examiner has failed to state a *prima facie* case of obviousness in connection with the present claims, withdrawal of the Examiner's rejections are respectfully requested.

Further, with regard to at least claims 18, 20, 27, 29, 31 and 32, Jones fails to teach or suggest a method for communicating data to an endpoint using a specified primary IP address over a first cable-based communications channel except during periods of service interruption, during which an alternative IP address is used for communicating over a second non-cable-based communications channel, as recited in claim 18, and similarly recited in claims 20, 27, 29 and 31. That is, the claims require different physical mediums, namely cable-based and non-cable-based communications channels.

Instead, Jones appears to disclose switching from "shared" and "unshared" connections using the same type of physical media (col. 4 lines 15-19).

Atarashi again fails to make up for the above noted deficiency in Jones.

With respect to Atarashi, it appears to teach switching from a working server to a backup server. Therefore, Atarashi fails to teach or even suggest the routing of data to an endpoint upon a service interruption by employing

primary and secondary IP addresses, as recited in claim 1 and similarly recited in claims 4, 12, 16, 17, 18, 20, 27, 29, 31 and 32. Atarashi also fails to teach, or even suggest, that primary and alternative IP addresses are used for communication over a first cable-based communication channel and a second non-cable-based communication channel, as recited in claim 18 and similarly recited in claims 20, 27, 29, 31 and 32.

**b. The references are improperly combined.**

To properly combine Jones and Atarashi, there must be some suggestion or motivation to make such a combination. It is respectfully submitted that there is no suggestion or motivation to make such a combination.

It is alleged in the Office Action that it would have been obvious to one of ordinary skilled in the art to combine Jones and Atarashi because Atarashi's "routing table and routing table changing and mapping teachings would improve Jones' switching to an alternative backup route or address for increased reliability."

It is respectfully submitted that the combination of Jones and Atarashi is improper for at least the following reasons. Jones is directed at techniques for improving the QoS between upstream and downstream data streams. In contrast, Atarashi is wholly unconcerned with the improvement of QoS between upstream and downstream data streams. Instead, Atarashi is concerned with overcoming problems related to the transfer of a client from a working server to a backup server. It is respectfully submitted that one of ordinary skill in the

art would not be motivated to combine Jones with Atarashi because there is no suggestion or motivation to make such a combination.

In sum, it is respectfully submitted that the claims of the present invention would not have been rendered obvious to one of ordinary skill in the art at the time the present application was filed based on a combination of the disclosures in Jones and Atarashi.

Accordingly, Applicants respectfully request withdrawal of the pending rejections and allowance of claims 1-2, 4-5, 12-21 and 27-32.

**Entry of Amendment After Final Rejection**

Entry of the Amendment is requested under 37 U.S.C. §1.116 because the Amendment: (a) places the application in condition for allowance for the reasons discussed herein; (b) does not raise any new issues regarding further search and/or considerations; (c) does not present any additional claims without canceling the corresponding number of finally rejected claims; and (d) places the application in better form for appeal, if an appeal is necessary. Entry of the Amendment is thus respectfully requested.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John E. Curtin at the telephone number of the undersigned below.

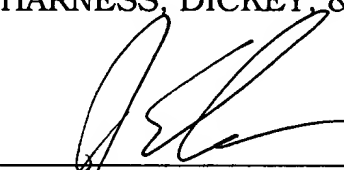
In the event this Response does not place the present application in condition for allowance, applicant requests the Examiner to contact the undersigned at (703) 668-8000 to schedule a personal interview.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKY, & PIERCE, P.L.C.

By



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